



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. At the hearing, the parties confirmed that the tenant vacated the rental unit by July 30, 2012. The landlord withdrew the application for an Order of Possession. The landlord's application for an Order of Possession is withdrawn.

Preliminary Issues – Service of Documents

The landlord's agent (the landlord) gave undisputed oral and written evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the tenant's door on August 2, 2012. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 29, 2012. The landlord provided the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served the above documents and the landlord's written evidence in accordance with the *Act*.

A few minutes before this hearing scheduled for 9:30 a.m. on November 9, 2012 was convened, I was forwarded a copy of a fax of the tenant's only written evidence for this hearing. This evidence was a 5-page fax transmission that was transmitted to the Residential Tenancy Branch (the RTB) at 5:14 p.m. on November 8, 2012. When queried about the lateness of this evidence, the tenant testified that the landlord's dispute resolution hearing package did not contain the full information that was supposed to have been sent to her about how and when she could submit her evidence

for this hearing. She testified that she had not submitted her written evidence to the landlord because the landlord had failed to submit the whole dispute resolution hearing package. The landlord testified that the entire dispute resolution hearing package was sent to the tenant.

I have carefully considered the tenant's request to take into account the written evidence she submitted well after the deadline for entering this written evidence. I first note that the Notice of a Dispute Resolution Hearing page that the tenant testified she received contains the following GENERAL INFORMATION about her responsibilities and about the hearing process:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*
2. *Residential Tenancy Branch Rules of Procedure apply to the proceedings: For details, contact the RTB or a Service BC Office or check online at <http://www.rto.gov.bc.ca/>.*

Although the tenant testified that the instructions referred to in the above General Information were not included in the package provided to her by the landlord, the information she did have noted that deadlines were critical and that her evidence had to be provided to the landlord. As noted above, she also had referrals to the RTB's Rules of Procedure and contact information and an on-line resource. I also noted during the hearing that two of the three handwritten pages the tenant submitted as late written evidence and a final page of three receipts for rent paid during this tenancy were barely legible and very difficult to read. The receipts had a grey background and the details of this alleged receipt for the payment of July rent was difficult to determine.

Under the circumstances and as the landlord had not been provided with this written evidence, I allowed the tenant to give sworn testimony as to what was contained in her written evidence. I also allowed the owner of the property to search for the receipt number for the alleged payment of July 2012 rent and give sworn oral testimony with respect to this receipt issued by one of the landlord's representatives. I have compared this testimony with the written receipts submitted by the tenant in reaching my decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a furnished rental unit was signed on September 9, 2011 for a tenancy that commenced on October 1, 2011. Monthly rent was set at \$625.00, payable in advance on the first of each month. The landlord continues to hold a \$312.50 security deposit for this tenancy paid by the tenant's former male friend.

The landlord conducted a joint move-in condition inspection on July 6, 2011 with the tenant's former male friend whose tenancy preceded that of the tenant. The landlord entered into written evidence a copy of the joint move-in condition inspection report. No joint move-out condition inspection was conducted. Although the landlord's representatives inspected the rental unit after the tenancy ended, the only written evidence the landlord provided with respect to that inspection was an itemized list of items that the landlord maintained went missing or required cleaning.

The landlord's original application for a monetary award of \$2,805.50 included the following items:

Item	Amount
Unpaid July 2012 Rent	\$625.00
Unpaid August 2012 Rent	625.00
TV and Stand	275.00
Assorted Pictures (10 x \$35.00 = \$350.00)	350.00
Floor Vase	18.00
Single Bed and Bedding	250.00
Microwave	35.00
Side Tables (4 x \$35.00 = \$140.00)	140.00
Pots and Pans/ Cutlery/ Dishes	135.00
Cleaning (6 hours @ \$35.00 = \$ 210.00)	210.00
Carpet Cleaning	100.00
Front Door Keys (2 x \$75.00 = \$150.00)	150.00
Condo Unit Door Keys (2 x \$5.00 = \$10.00)	10.00
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$2,973.00

At the hearing, the landlord testified that one of the landlord's representatives did receive both sets of keys. The landlord withdrew the request for reimbursement of the two sets of keys, thus reducing the amount of this claim by \$160.00. The landlord also testified that there was a \$25.00 payment made by the tenant for July 2012.

At the hearing, both representatives of the landlord testified that the tenant removed the above items during the course of this tenancy. Although they did not advertise this suite for rental, they were able to obtain a short term re-rental of the premises for a one-month period from August 17 until September 17 for a total of \$775.00. They were able to furnish the rental unit with a couch and a chair from another rental unit in the property for that period. The landlord did not submit any receipts for any of the items claimed in their application. They said that they have not replaced these items.

The tenant testified that she contacted one of the landlord's representatives during this tenancy as she wanted the landlord to remove many of their furnishings so that she could bring her own furnishings to the premises. She testified that after many phone calls this representative, SJ, agreed to remove most of the furnishings and place them in a vacant suite elsewhere in this building. She testified that the television and microwave were stored in the closet. She said that there never were side tables or bedding provided with this tenancy. She admitted that she had taken two chairs that belonged to the landlord, removed from the rental unit by accident by her movers. She testified that she vacuumed the premises at the end of this tenancy but did not steam clean the carpets or hire professional cleaners.

At the hearing, the tenant attempted to have SJ called as her witness to confirm the testimony she provided with respect to the removal of items from her previously furnished rental suite. She noted that SJ also inspected the rental unit at the end of this tenancy with her and knew that the television and microwave were in the storage closet for this rental unit. SJ was not available at the phone number provided by both the landlord and tenant.

The tenant also gave sworn oral testimony with respect to her submission of Receipt # 550389 into late written evidence. She maintained that she paid \$600.00 towards her July 2012 rent and was given this receipt by one of the landlord's representatives. The other two receipts she submitted were for rent paid in June 2012, in two phases. She testified that the notation under the landlord's corporate name and beside the signature of the landlord's representative stated that Receipt 550389 was for July Rent.

The owner of the property had no record of any payment for July 2012, other than a \$25.00 overpayment in June 2012 applied towards the July 2012 rent. During the hearing, she checked her records and was able to locate Receipt 550389. She and the landlord's agent (AL) testified that there was no notation of "July Rent" on their copy of Receipt 550389.

Analysis – Unpaid Rent

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on a balance of probabilities, I find that the only rent paid by the tenant for July or August 2012 for this tenancy was a \$25.00 overpayment that the tenant made prior to July 1, 2012, that was applied to her rent for July 2012. I do not find that the tenant has provided sufficient evidence that she made a \$600.00 payment for rent for July 2012. In coming to this determination, I note that there was conflicting evidence with respect to the tenant's claim that the landlord's Receipt 550389 cited that this payment was received for July Rent. Although this receipt is unclear, it appears that the date for this receipt was May 3, 2012. Payment of \$600.00 on May 3, 2012 for rent that was not owing until July 1, 2012 seems highly unlikely given that the tenant was unable to pay all of her June rent until June 28, 2012. I also take into account that the landlord identified \$1,150.00 as owing as of August 1, 2012 in the 10 Day Notice issued on August 2, 2012, an amount that is far in excess of the August 2012 rent that became due on August 1, 2012. Since the tenant was clearly aware that the landlord was seeking unpaid rent for July 2012, I find that the tenant had an opportunity to present legible evidence well in advance of this hearing if she had in her possession a receipt issued by the landlord for July 2012 rent as she has claimed. Her failure to provide this evidence until the day before this hearing and her failure to send a copy to the landlord leads me to conclude that the tenant has failed to produce legible evidence to support her claim that she paid her July 2012 rent. I find that the landlord is entitled to a monetary award of \$600.00 for unpaid rent for July 2012.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for August 2012, the tenant would have needed to provide her notice to end this tenancy before July 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing. There is no evidence that the tenant complied with these provisions of the *Act*.

The landlord issued a 10 Day Notice on August 2, 2012 and the tenant did not provide her keys to one of the landlord's representatives until after monthly rent for August 2012 became due. For the above reasons, I find that the tenant has contravened her tenancy agreement and the *Act* by failing to pay monthly rent that was due for August 2012. However, section 7(2) of the *Act* also places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the landlord testified that no advertisements were placed to rent his suite for August 2012. Despite this lack of advertising, the landlord did rent the premises for the period from August 17, 2012 until August 31, 2012, at a pro-rated monthly rent of \$775.00. This equated to a payment of \$375.00 for August 2012 received for this rental unit ($\$775.00 \times 15 / 31 = \375.00). As I am satisfied that the landlord has taken some steps to mitigate the tenant's losses for unpaid rent for August 2012 and did not realize that the tenant had vacated the rental unit until after August 2, 2012, I find that the landlord is entitled to a monetary award of \$250.00 for unpaid rent for August 2012.

Analysis – Remainder of Landlord's Application for a Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the evidence presented by the landlord, I am not satisfied that the landlord has demonstrated entitlement to a monetary award for losses or damage beyond that associated with the cleaning the rental unit and the loss of two chairs that the tenant confirmed that were loaded by her movers and taken to her new accommodations. Although the tenancy agreement entered into written evidence by the landlord stated that this was a furnished rental unit, the landlord provided few details regarding this claim other than an itemized list with estimated replacement values for the items claimed missing. The landlord testified that the items listed as missing have not been replaced as yet. The landlord confirmed that no receipts have been submitted to support the landlord's claim for a monetary award for losses arising out of this tenancy. The landlord continues to employ SJ who apparently knows more about the interactions between the tenant and the landlord with respect to the furnished items in this rental unit. The landlord did not call him as a witness, nor did the landlord submit any written statement from him. Based on a balance of probabilities, I find that the tenant presented detailed and undisputed sworn oral testimony with respect to the whereabouts of the furnished items in this rental unit. I also find the tenant's admission that she still has two of the landlord's chairs and that she only conducted a spot cleaning of the carpets at the end of this tenancy was specific and presented as a

truthful account of the events she described. Her attempt to have SJ, an employee of the landlord called as a witness, also suggests that her account of the items listed as missing by the landlord is accurate.

Section 38 (2) of the Act requires a tenant to leave a rental unit “reasonably clean and undamaged” at the end of a tenancy. Despite the landlord’s failure to provide receipts or to demonstrate actual losses associated with this tenancy, I find that the tenant’s own testimony confirmed that she did not comply with section 38(2) of the Act. For these reasons, I find that the landlord is entitled to a monetary award of \$60.00 for cleaning of the rental unit (3 hours at \$20.00 per hour) and \$50.00 for carpet cleaning which appears to have been necessary at the end of this tenancy.

In addition, I find that the landlord is entitled to a monetary award of \$80.00 for items that went missing during this tenancy. This amount is a somewhat nominal figure which is designed to recover among other items the two chairs that the tenant admitted to having removed from the rental unit at the end of this tenancy.

I allow the landlord to retain the security deposit for this tenancy plus applicable interest in partial payment of the monetary award requested by the landlord. No interest is payable over this period. As the landlord has been partially successful in this application, I allow the landlord to recover the filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord’s favour under the following terms which allows the landlord to recover unpaid rent, damage and losses arising out of this tenancy, and the filing fee for this application and to retain the security deposit for this tenancy.

Item	Amount
Unpaid July 2012 Rent	\$600.00
Unpaid August 2012 Rent	250.00
Missing Items from Rental Unit at End of Tenancy	80.00
Cleaning (3 hours @ \$20.00 = \$ 60.00)	60.00
Carpet Cleaning	50.00
Less Security Deposit	-312.50
Recovery of Filing Fee for this application	50.00
Total of Monetary Order	\$777.50

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 14, 2012

Residential Tenancy Branch

